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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's
Rules To Establish New Personal
Communications Services

Gen. Docket No. 90-314
ET Docket No. 92-100

REPLY COMMENTS OF
CLEAR CREEK MUTUAL TELEPHONE COMPANY, MOLALLA
TELEPHONE COMPANY, MONITOR COOPERATIVE TELEPHONE COMPANY,
MONROE TELEPHONE COMPANY, MT. ANGEL TELECOMMUNICATIONS,
INC., PIONEER TELEPHONE COOPERATIVE, SCIO MUTUAL TELEPHONE
ASSOCIATION AND YELM TELEPHONE COMPANY

CLEAR CREEK MUTUAL TELEPHONE
COMPANY, MOLALLA TELEPHONE
COMPANY, MONITOR COOPERATIVE
TELEPHONE COMPANY, MONROE
TELEPHONE COMPANY, MT. ANGEL
TELECOMMUNICATIONS, INC.,
PIONEER TELEPHONE COOPERATIVE,
SCIO MUTUAL TELEPHONE
ASSOCIATION AND YELM TELEPHONE
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Dated: January 8, 1993

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TABLE OF CONTENTS

	<u>PAGE</u>
SUMMARY	i
I. RURAL LOCAL EXCHANGE COMPANIES SHOULD BE ELIGIBLE TO PROVIDE PCS IN THEIR SERVICE AREAS	4
II. RURAL LECS SHOULD BE GRANTED PCS LICENSES UPON REQUEST .	5
III. THE COMMISSION SHOULD CREATE A FLEXIBLE REGULATORY ENVIRONMENT TO FACILITATE THE INTRODUCTION OF PCS TO RURAL AREAS	9
IV. CONCLUSION	11

SUMMARY

The initial comments in this proceeding demonstrate strong support for the prompt delivery of PCS in rural areas at reasonable rates consistent with the Commission's overarching goals of promoting diversity, universality and competition in PCS. Consistent with this view, the majority of commenters addressing the issue of LEC eligibility to provide PCS agree with the Rural Telcos that the public interest is best served by permitting LECs and cellular service providers, particularly rural LECs and cellular service providers to provide PCS within their service areas.

Historically, the critical issue for rural areas has been the introduction of new services, rather than the competitive delivery of new services. The Rural Telcos believe that small LEC provision of PCS to rural areas is critical to ensuring that wireless services will, in fact, be introduced to rural areas of America. Accordingly, the Rural Telcos urge the Commission to:

- adopt a rural area licensing scheme under which the Commission would grant PCS licenses upon request to rural LECs serving populations of 10,000 or less, provided that they will serve their existing service areas, and
- establish as a matter of policy that rural LEC PCS providers can define smaller PCS service area boundaries within the established cellular MSA/RSA (or other) licensing areas in order to serve discrete localities.

In light of the historic difficulties in providing modern telecommunications services to rural areas, the Rural Telcos believe that the Commission must adopt a flexible regulatory approach and make a special effort to adopt PCS rules that will assure that rural America reaps the significant benefits of PCS.

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Clear Creek Mutual Telephone Company, Molalla Telephone Company, Monitor Cooperative Telephone Company, Monroe Telephone Company, Mt. Angel Telecommunications, Inc., Pioneer Telephone Cooperative, Scio Mutual Telephone Association and Yelm Telephone Company, (collectively referred to herein as the "Rural Telcos") hereby submits these reply comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/} While the Rural Telcos support the Commission's efforts to develop a regulatory scheme that will permit rapid implementation of advanced wireless personal communications services in the United States, the Rural Telcos strongly believe that the Commission must carefully develop licensing, operational, and other PCS requirements in this proceeding that will promote,

^{1/} Notice of Proposed Rulemaking and Tentative Decision, FCC 92-333 (released August 14, 1992).

rather than inhibit, the provision of PCS in rural America. Consistent with the Rural Telco's position, the initial comments in this proceeding show that many parties recognize the important and distinct needs of the rural PCS market. Many commenters also share the Rural Telco's view that the Commission's mandate under the Communications Act of 1934, as amended, requires the Commission to address the unique needs of rural subscribers in establishing rules for new services such as PCS.^{2/}

As discussed in the initial comments, to ensure the availability and affordability of wireless services in rural areas, the Rural Telcos strongly recommend that the Commission modify its proposed PCS rules regarding the eligibility of rural local exchange companies ("LECs") to provide PCS, the appropriate licensing mechanism to issue PCS licenses, and urge the Commission to establish small service areas for PCS licensees. The initial comments in this proceeding reveal a general consensus that rural LECs and cellular service providers should be permitted to provide PCS within their service areas. The Commission should ensure that PCS services develop successfully in rural areas by granting rural PCS licenses at the request of rural LECs serving areas with populations of 10,000 or less.^{3/} The Rural Telcos would oppose rules that would handicap LECs from providing PCS in rural areas. If the Commission does restrict LEC PCS licenses, it should adopt a specific exemption for small rural telephone companies serving areas of 10,000 or less from any restrictions generally imposed on LECs.

^{2/} See, e.g., Comments of the Rural Independent Coalition, at 2-4.

^{3/} See Comments of Rural Telcos at 9.

The initial comments also demonstrate strong support for licensing small service areas for PCS. Given the options provided by the Commission, a substantial number of commenters endorsed the RSA/MSA service area option as one which would create many small markets, thereby promoting diversity and competition. While the Rural Telcos concur with these commenters that licensing small service areas will best achieve the Commission's goals, they submit that the Commission should authorize even smaller service areas, particularly for rural areas of the United States. Accordingly, the Rural Telcos urge the Commission to permit rural LECs requesting a PCS license to define smaller PCS service area boundaries within the established MSA/RSA licensing areas. The Rural Telcos believe that the imposition of minimal regulatory burdens on rural PCS providers will allow PCS providers to develop expeditiously and introduce PCS that meet the needs of the various rural areas. Further, the Rural Telcos endorse the Commission's minimalist approach to PCS regulation,⁴ and request that the Commission permit cooperative rural telephone companies to elect private land mobile status for their PCS offerings.⁵

In light of the historic difficulties in providing modern telecommunications services to rural areas, the Commission must make a special effort to adopt PCS rules that will assure that subscribers in rural America, as well as those in urban areas, have the opportunity to share in the significant benefits expected from the introduction of PCS.

⁴ Id. at 5-6.

⁵ Id. at 10.

The modifications to the Commission's PCS licensing scheme proposed herein will, if adopted, further these important public interest goals.

I. RURAL LOCAL EXCHANGE COMPANIES SHOULD BE ELIGIBLE TO PROVIDE PCS IN THEIR SERVICE AREAS

Consistent with the Rural Telcos' position, the majority of commenters addressing the issue of LEC eligibility to provide PCS agree that the public interest in speedy delivery of PCS services to the American public is best served by allowing LECs to provide PCS within their existing service areas.[¶] While the Rural Telcos recognize and appreciate the Commission's concern that LECs providing PCS in their wireline territories could potentially "discriminate against competitors requesting interconnection as well as to cross-subsidize PCS provision from expenditures ostensibly made to serve rate regulated wireline customers,"[¶] the Rural Telcos submit that given the history of telecommunications services in rural areas there is a low risk of anticompetitive LEC behavior in rural areas. Historically, the critical issue for rural areas is the introduction of new services, such as PCS, in the first instance, rather than competitive delivery of new services. First, the galvanizing force for anticompetitive behavior in densely populated urban areas --

[¶] See, e.g., Comments of AT&T; Comments of U.S. Sprint; Comments of Ameritech Operating Companies; Comments of Hughes Network Systems, Inc.; Comments of the Cellular Telecommunications Industry Association; Comments of Centel Corporation; Comments of Northern Telecom; Comments of the Rural Independent Coalition; Comments of the National Rural Telecom Association and the Organization for the Protection and Advancement of Small Telephone Companies.

[¶] Notice at ¶ 72.

large revenues -- simply do not exist in sparsely populated rural areas. Second, the attributes that enable LECs potentially to engage in discriminatory and anticompetitive behavior in densely populated urban areas -- infrastructure, financial resources and technical expertise -- are precisely the same attributes that will enable rural LECs to introduce PCS successfully to rural areas.

Further, in addition to resources and expertise, small rural LECs possess a demonstrated commitment, desire, and capacity to serve rural areas unlike LECs serving densely populated areas or prospective PCS providers with no telecommunications experience. Thus, the rationale for excluding LECs from providing PCS within their existing service areas is not relevant to small LECs providing service in rural areas. Moreover, the anticompetitive concern is further diminished in rural areas by the fact that many rural LECs operate as cooperatives, in which the subscribers, members and owners are one and the same. Given the low potential risk of anticompetitive behavior on the part of the LECs providing rural PCS, small rural LECs should have the full opportunity to bring convenient, state-of-the-art services to sparsely populated areas as quickly as possible.

II. RURAL LECs SHOULD BE GRANTED PCS LICENSES UPON REQUEST

The initial comments in this proceeding addressing the provision of PCS in rural areas uniformly agree that the Commission's public interest goals for PCS -- universality, speed of deployment, diversity of providers, and competitive delivery of PCS⁹ -- require

⁹ Notice at ¶ 6.

that the Commission ensure that rural LECs are able to provide PCS to their rural subscribers. Many commenting parties agreed that authorizing rural LECs to provide PCS is critical to ensuring that wireless services will, in fact, be introduced in rural areas of America promptly and at reasonable rates. Consistent with this view, numerous parties propose that the Commission set aside or reserve one block of spectrum out of five 20 MHz blocks for LECs to provide service to rural areas.⁹ Parties proposing the rural LEC set aside also propose that the license be issued through a modified or reformed lottery process designed to deter potential license speculators.¹⁰

The Rural Telcos concur with the general view that rural LECs should be authorized to provide PCS in their service areas. However, the Rural Telcos oppose the use of a lottery process to select PCS licensees for rural areas. The Rural Telcos thus proposed in the initial comments that the Commission adopt a rural area licensing scheme under which the Commission would grant PCS licenses upon request to rural LECs serving populations of 10,000 or less, provided that they will serve their existing service areas.¹¹ The Rural Telcos believe that this licensing scheme will serve the important public interest

⁹ See, e.g., Comments of Palmetto Rural Telephone Cooperative, Inc. at 8-9; Comments of Home Telephone Company at 8-9; Comments of Roseville Telephone Company at 6-7; Comments of the South Carolina Telephone Association at 11; Comments of Piedmont Rural Telephone Cooperative, West Carolina Rural Telephone Cooperative, Farmers Rural Telephone Cooperative at 2; Comments of Rural Independent Coalition at 5-6.

¹⁰ Id.

¹¹ Comments of Rural Telcos at 9.

goal of developing rural communications services while addressing the need to ensure a fair and competitive playing field in the provision of PCS.

This licensing approach recognizes that the LECs that would be eligible for the rural LEC license have already demonstrated a substantial commitment to serving rural areas through years of providing high quality wireline and/or cellular services to rural subscribers at affordable prices. The proposed license scheme would give rural LECs an opportunity to continue to meet rural subscriber needs with advanced telecommunications services. Rural LECs are in the best position to provide PCS in their rural service areas since they possess the greatest technical and operational qualifications as well as a demonstrated commitment and willingness to serve their rural subscribers. In the Rural Telcos' view, this proposed rural PCS licensing scheme will best achieve the Commission's goals of ensuring the 1) speedy delivery of PCS services, 2) proliferation of services tailored to the specific needs of the various rural areas, and 3) universality of service.

Despite the arguments of numerous commenters that lotteries will expedite the PCS licensing process^{12/} and facilitate the expeditious delivery of services to the public, the Rural Telcos submit that use of a lottery process to issue PCS licenses will impede, rather than advance, the Commission's goals of universality, speed of deployment,

^{12/} See e.g. Comments of AT&T; Comments of Bell South; Comments of Cablevision Systems Corporation; Comments of Associated PCS Company; Comments of Motorola, Inc.; Comments of Cincinnati Bell Telephone Company; Comments of Rolm; Comments of Small Business Administration, Comments of the National Telephone Cooperative Association; Comments of U.S. Telephone Association.

diversity of services, and competitive delivery. A licensing scheme based on lotteries will not necessarily result in the expeditious delivery of services if the lottery winner does not have the requisite experience in serving a rural community, technical qualifications, financial resources, or sufficiently developed plans to initiate the service desired and needed in the rural community. Accordingly, the Rural Telco's oppose the use of lottery procedures for PCS licenses including a PCS license that would be set aside for LECs.

Alternatively, if the Commission elects to use the lottery process to issue PCS licenses, the Rural Telcos strongly urge the Commission to adopt certain reforms, supported by several commenters, that will exclude potential speculators from entering the lottery and ensure that the lottery winner will provide high quality service promptly to rural subscribers. Specifically, in the event the Commission adopts lottery procedures, the Rural Telcos urge that the PCS lottery procedures include the following features:

- Small telephone companies serving rural areas should receive a preference.^{13/}
- The lottery should be subject to short filing windows.^{14/}
- License transfers should be strictly limited.^{15/}
- Lottery winners should be required to meet stringent technical and financial requirements prior to the lottery.^{16/}

^{13/} See Comments of Swayzee Telephone Company at 4.

^{14/} See, e.g., Comments of Concord Telephone Company at 5; Comments of Roseville Telephone Company at 13.

^{15/} Id.

^{16/} Id.

- Reasonable construction periods and commencement deadlines.

III. THE COMMISSION SHOULD CREATE A FLEXIBLE REGULATORY ENVIRONMENT TO FACILITATE THE INTRODUCTION OF PCS TO RURAL AREAS

The Rural Telcos support the Commission's minimalist approach to regulating PCS given the virtual impossibility of foreseeing how the panoply of PCS services will develop in the future. The Rural Telcos concur with numerous other commenters and the Commission that the public interest will be best served if the Commission establishes a flexible regulatory environment conducive to competition and allows the market, rather than regulation, to direct the course of PCS development.

Consistent with this view, the Rural Telcos join the National Rural Telecom Association and the Organization for the Protection and Advancement of Small Telephone Companies¹⁷ in urging the Commission to license small service areas that are no larger than the established cellular RSA/MSA licensing areas. The Rural Telcos believe that licensing small service areas will provide a meaningful opportunity for rural LECs to bring PCS to their communities. In contrast to licensing large service areas that would likely result in the concentration of PCS providers in more lucrative densely populated

¹⁷ Joint Comments of the National Rural Telecom Association and the Organization for the Protection and Advancement of Small Telephone Companies at 9-11.

localities,¹⁸ the Rural Telcos believe that small service areas will encourage broader participation in PCS, greater diversity in services, broader technical innovation, and promote universality.

The Rural Telcos concur with the Commission's observation that:

Some potential PCS licensees may be interested in serving only their local areas, including smaller communities that are less economic to serve. This approach may minimize certain transaction costs associated with having larger areas, such as subcontracting with other companies to provide service in these smaller cities and communities.¹⁹

Accordingly, the Rural Telcos propose that the Commission establish as a matter of policy that rural LEC PCS providers will be permitted to carve out a PCS service area from the established cellular MSA/RSA licensing areas. Further, consistent with a flexible regulatory environment, the Rural Telcos believe that rural telephone cooperatives should be given the option to provide PCS to their memberships as a private land mobile service under the more flexible and reduced regulatory requirements that accompany that designation. This option would encourage rural telephone companies to offer PCS services in rural areas without adversely affecting other PCS providers or impairing the development of the PCS market.

¹⁸ See, e.g., Comments of MCI (National); Comments of Bell Atlantic (National); Comments of Pacific Telesis (Basic Trading Areas); Comments of Cox Enterprise (Major Trading Areas); Comments of Cablevision Systems Corporation (LATAs); Joint Comments of the National Rural Telecom Association and the Organization for the Protection and Advancement of Small Telephone Companies at 10-11.

¹⁹ Notice at ¶ 59.

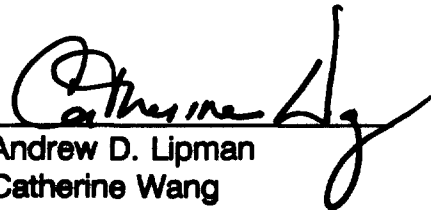
IV. CONCLUSION

The Rural Telcos urge the Commission to consider the special circumstances of small rural telephone companies and their customers in formulating PCS licensing and operating rules in this proceeding. For the reasons discussed above, the Rural Telcos believe that the modifications proposed will significantly advance the public interest in promoting widespread and affordable advanced telecommunications services in rural America.

Respectfully submitted,

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